

US EPA ARCHIVE DOCUMENT

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9**

75 Hawthorne Street  
San Francisco, California 94105

IN THE MATTER OF:	)	DOCKET NOS. CWA-09-2018-0001
	)	OPA-09-2018-0001
Granite Rock Company.	)	
	)	<b>CONSENT AGREEMENT AND</b>
Peninsula Road Materials Facility	)	<b>FINAL ORDER</b>
Peninsula Recycling Services Facility	)	
A.R. Wilson Road Materials Facility	)	<i>Class II Administrative Penalty Proceeding</i>
	)	<i>under Sections 309(g) and 311(b)(6) of the</i>
Respondent.	)	<i>Clean Water Act, 33 U.S.C. §§ 1319(g) and</i>
	)	<i>1321(b)(6), and 40 C.F.R. §§ 22.13(b) and</i>
	)	<i>22.18</i>

**CONSENT AGREEMENT**

**I. AUTHORITY AND PARTIES**

1. This is a Class II civil administrative penalty proceeding under Sections 309(g)(1)(A) and (2)(B), and 311(b)(6)(A) and (B)(ii) of the Clean Water Act (CWA), 33 U.S.C. §§ 1319(g)(1)(A) and (2)(B), and 1321(b)(6)(A) and (B)(ii), and 40 C.F.R. Part 22 (Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits).
2. Pursuant to Sections 309(g) and 311(b)(6) of the CWA, 33 U.S.C. §§ 1319(g) and 1321(b)(6), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against persons who violate Sections 301(a) and 311 of the Act, 33 U.S.C. §§ 1311(a) and 1321. The Administrator has delegated this authority to the Regional Administrator of the EPA Region 9, who in turn has delegated this authority to the Director of the Enforcement Division, hereinafter "Complainant."
3. Respondent is Granite Rock Company (hereinafter Graniterock).
4. This Consent Agreement and Final Order (CA/FO), which contains the elements of a complaint required by 40 C.F.R. § 22.14(a), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent by the EPA and Respondent, it is hereby STIPULATED, AGREED, AND ORDERED:

## II. STATUTORY AND REGULATORY FRAMEWORK

### Stormwater

5. CWA Section 301(a), 33 U.S.C. § 1311(a), makes it unlawful for a person to discharge pollutants from a point source into waters of the United States, except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.
6. CWA Section 402, 33 U.S.C. § 1342, establishes the NPDES program and authorizes the EPA and authorized states to issue permits governing the discharge of pollutants from point sources into waters of the United States. CWA Section 402(p), 33 U.S.C. § 1342(p), requires that NPDES permits be issued for stormwater discharges “associated with industrial activity.”
7. 40 C.F.R. § 122.26(b)(14)(ii) and (vi) define stormwater discharges associated with industrial activity to include stormwater discharges from facilities classified within Standard Industrial Classification (SIC) Major Group 29 and SIC Industry Number 5093, respectively.
8. Pursuant to CWA § 402(p)(4), dischargers of stormwater associated with industrial activity are required to seek coverage under a promulgated general permit or seek individual permit coverage.
9. The State of California issues permits, including industrial storm water permits, through its State Water Resources Control Board (State Water Board) and nine Regional Water Quality Control Boards (Regional Boards). On April 17, 1997, the State Water Board adopted General Permit No. CAS000001 (1997 Permit) for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities, Water Quality Order No. 97-03-DWQ, which was in effect through June 30, 2015.
10. The State Water Board subsequently revised the permit on April 1, 2014, by issuing Water Quality Order No. 2014-0057-DWQ, effective on July 1, 2015 (2015 Permit). For enforcement purposes, stormwater discharges and certain non-stormwater discharges from Respondent’s facilities on or after July 1, 2015 are authorized if in compliance with the current 2015 Permit. Stormwater discharges prior to that date were authorized if in compliance with the 1997 Permit.
11. Pursuant to CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19.4, for violations that occurred after November 2, 2015, EPA may assess a Class II civil administrative penalty up to \$20,965 per day of violation, not to exceed \$262,066 in total.

### Spill Prevention Control and Countermeasures

12. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), provides for the regulation of onshore facilities to prevent or contain discharges of oil. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides in part that the President shall issue regulations “establishing procedures, methods, and equipment or other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges.”

13. Initially by Executive Order 11548 (Jul. 20, 1970), 35 Fed. Reg. 11,677 (Jul. 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (Oct. 18, 1991), 56 Fed. Reg. 54,757 (Oct. 22, 1991), the President delegated to EPA the authority under Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), to issue the regulations referred to in the preceding paragraph for non-transportation-related onshore facilities.
14. EPA subsequently promulgated regulations codified at 40 C.F.R. Part 112, as amended by 67 Fed. Reg. 47,042 (Jul. 17, 2002) (Oil Pollution Prevention Regulations) pursuant to its delegated statutory authorities, and pursuant to its authorities under the CWA, 33 U.S.C. §§ 1251 *et seq.* The Oil Pollution Prevention Regulations establish certain procedures, methods, and requirements, applicable to every owner and operator of a non-transportation related onshore facility with an aboveground storage capacity of more than 1,320 gallons of oil, where the facility, due to its location, could reasonably be expected to discharge oil into or on navigable waters or their adjoining shorelines in such quantities as may be harmful to the public health or welfare or the environment of the United States. *See* 40 C.F.R. § 112.1(b).
15. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), EPA determined that an oil discharge is of a harmful quantity if it either “(a) violate[s] applicable water quality standards, or (b) cause[s] a film or sheen upon, or discoloration of the surface of the water or adjoining shorelines, or a sludge or emulsion to be deposited beneath the surface of the water or on adjoining shorelines.”
16. Pursuant to CWA Section 311(b)(6)(A) and (B)(ii), 33 U.S.C. § 1321(b)(6)(A) and (B)(ii), and 40 C.F.R. § 19.4, EPA may assess a Class II civil administrative penalty of up to \$18,107 per day of violation, not to exceed \$226,338 in total, against a person who fails or refuses to comply with an applicable regulation under Section 311(j) of the CWA, 33 U.S.C. § 1321(j).

### III. GENERAL ALLEGATIONS

#### Stormwater

17. Respondent is a California corporation and therefore, a person within the meaning of CWA Section 502(5), 33 U.S.C. § 1362(5).
18. Respondent operates the Graniterock Peninsula Road Materials facility, located at 365 Blomquist Street in Redwood City, California, hereinafter “Peninsula Road Materials Facility.” Respondent has been engaged in the production and sale of asphalt and specialty asphaltic emulsions at the Facility since at least June 30, 2012, a date best known to Respondent. Respondent’s operations at the Peninsula Road Materials Facility fall within activities classified under SIC code 2951 (Asphalt Paving Mixtures and Blocks), and therefore qualify as “industrial activity” for purposes of CWA Section 402(p), 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26(b)(14)(ii).
19. Respondent operates the Graniterock Peninsula Recycling Services facility, located at 195 Seaport Boulevard in Redwood City, California, hereinafter “Peninsula Recycling Services Facility.” Respondent has been engaged in the processing (i.e., sorting and crushing) of used concrete and asphalt to produce recycled base rock for sale and for use at Respondent’s Peninsula Road Materials Facility as well as Respondent’s other facilities not subject to this



Consent Order. Respondent has operated the Peninsula Recycling Services Facility since at least June 2012, a date best known to Respondent. Respondent's operations at the Peninsula Recycling Services Facility fall within activities classified under SIC code 5093 (Scrap and Waste Materials) and therefore qualify as "industrial activity" for purposes of CWA Section 402(p), 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26(b)(14)(vi).

20. Stormwater runoff from the Peninsula Road Materials Facility and the Peninsula Recycling Services Facility (collectively, the Peninsula Facilities) is a "stormwater discharge associated with industrial activity" as defined by 40 C.F.R. § 122.26(b)(14)(ii) and (vi).
21. Stormwater runoff from the Peninsula Facilities discharges into storm drain inlets located on Blomquist Street and Seaport Boulevard, which are connected to the Redwood City municipal separate storm sewer system (MS4). Such inlets, pipes, and the Redwood City MS4 are "point sources" within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).
22. The Redwood City MS4 discharges to the San Francisco Bay, which is connected to the Pacific Ocean. The San Francisco Bay and the Pacific Ocean are "waters of the United States" within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7), and implementing regulations.
23. Stormwater discharges from the Peninsula Facilities include suspended sediment, oil and grease, and iron, and therefore contain "pollutants," as defined by CWA Section 502(6), 33 U.S.C. § 1362(6).
24. Respondent's discharge of pollutants in stormwater into waters of the United States constitutes a "discharge of pollutants" within the meaning of CWA Section 502(12), 33 U.S.C. § 1362(12).
25. Respondent filed separate Notices of Intent (NOIs) seeking coverage under the 1997 Permit for the Peninsula Road Materials and the Peninsula Recycling Services facilities, on or around May 7, 1997. Respondent filed separate NOIs, seeking coverage under the 2015 Permit for the Peninsula Road Materials facility on or around March 24, 2015 (assigned WDID #2411006083); and for the Peninsula Recycling Services facility on or around April 6, 2015 (assigned WDID #2411012467).
26. On February 9, 2015, representatives from EPA inspected Respondent's Peninsula Facilities in Redwood City, California. EPA completed an inspection report (Peninsula Facilities Inspection Report) and provided it to Respondent on November 30, 2015. The Inspection Report identified the following deficiencies: lack of good housekeeping measures in the lay down storage area; inadequate perimeter control best management practices (BMPs) to reduce fine sediment discharge during runoff events; and lack of good housekeeping practices to address the accumulation of sand and fine sediment.
27. Respondent replied to EPA's Peninsula Facilities Inspection Report by letter dated January 15, 2016. Respondent's letter acknowledged certain deficiencies, and provided a description of the actions Respondent had taken or planned to take in order to comply with applicable Permit requirements.

28. On December 9, 2016, Complainant and Respondent entered into an Administrative Order on Consent, agreeing to measures Respondent would implement to remedy the deficiencies identified above.
29. Between June 1, 2012 and January 30, 2017, there were at least forty-seven rain events equal to or exceeding 0.5 inches during a 24-hour period recorded at the National Oceanographic and Atmospheric Association's San Francisco Airport weather station. Upon information and belief, each of these forty-seven rainfall events generated stormwater associated with industrial activity at the Peninsula Facilities sufficient to cause a discharge from the Peninsula Facilities.

### SPCC

30. Respondent owns and operates the A.R. Wilson Road Materials Facility located at 1900 Quarry Road in Aromas, San Benito County, California (Aromas Facility). Respondent is therefore an "owner or operator" of the Aromas Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.
31. The Aromas Facility is primarily engaged in the production of asphaltic concrete and asphalt emulsions, and has an aggregate aboveground storage capacity of 124,595 gallons of oil. Petroleum products are stored at the site in thirteen (13) aboveground storage tanks, ranging in capacity from 250 to 30,000 gallons, and in numerous drums and totes. At all relevant times, the Aromas Facility has had an aggregate storage capacity of 1,320 gallons or more of oil.
32. The Aromas Facility is an onshore facility within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.
33. The Aromas Facility is a "non-transportation-related facility" as defined in Appendix A to 40 C.F.R. Part 112, as incorporated by reference in 40 C.F.R. § 112.2.
34. The Aromas Facility is located approximately 1,000 feet from the Pajaro River. The Pajaro River flows to the Monterey Bay and the Pacific Ocean. Monterey Bay and the Pacific Ocean are "navigable waters" of the United States, as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.
35. The Aromas Facility is therefore a non-transportation-related onshore facility that, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity (an SPCC-regulated facility).
36. Pursuant to the CWA, Executive Order 12777, and 40 C.F.R. § 112.1, Respondent, as the owner and operator of an SPCC-regulated facility, is subject to the Oil Pollution Prevention Regulations.
37. On January 13, 2016, EPA inspected the Aromas Facility for compliance with the Oil Pollution Prevention Regulations. EPA completed an inspection report (Aromas Facility Inspection Report) and provided it to Respondent on May 4, 2016. The Aromas Facility Inspection Report identified the following deficiencies: SPCC Plan review was overdue; portable storage containers were not positioned in a manner to prevent discharge;

“Graniteseal” bulk storage container lacked adequate secondary containment; loading/unloading rack was observed at the facility but not identified in the facility’s SPCC Plan; and inspections and tank integrity testing were not being performed in accordance with industry standards.

38. Respondent replied to EPA’s Aromas Facility Inspection Report by letter dated June 3, 2016. Respondent’s letter acknowledged certain deficiencies, and provided a description of the actions Respondent had taken or planned to take in order to comply with applicable SPCC requirements.

#### **IV. ALLEGED VIOLATIONS**

39. EPA alleges that between June 2012 and January 2017, Respondent violated Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), on at least forty-seven days, by discharging stormwater from its Peninsula Facilities while not in compliance with the 1997 and 2015 Permits. Further, Respondent violated CWA Section 402, 33 U.S.C. § 1342, each day that it failed to comply with the terms of the applicable permit. EPA alleges that Respondent failed to comply with requirements of the 1997 and 2015 Permits, specifically in: failing to develop site maps depicting directional stormwater flows and run-on/runoff locations, as required by Part A.4.a-b of the 1997 Permit and Part X.E.3.a-c of the 2015 Permit; failing to implement good housekeeping measures to minimize the mobilization of pollutants from material handling and waste management, as required by Part A.8(a)(i) and (iv) of the 1997 Permit and Parts X.H.1(a) and (d) of the 2015 Permit; and by failing to implement and maintain effective BMPs as required by Part A.8(a)(ii) and (viii) of the 1997 Permit and Parts X.H.1(b) and (e), and X.H.2 of the 2015 Permit.
40. EPA alleges that Respondent failed to comply with applicable SPCC requirements of the Oil Pollution Prevention regulations at its Aromas Facility, specifically in: failing to update its SPCC Plan in accordance with 40 C.F.R. § 112.5(b); failing to document storage areas where mobile or portable containers are located, and to position such containers in a manner to prevent discharge, as required by 40 C.F.R. §§ 112.7(a)(3) and 112.8(c)(11); failing to provide adequate secondary containment around the “Graniteseal” bulk storage container, as required by 40 C.F.R. § 112.7(c); failing to identify loading and unloading racks and to provide appropriate secondary containment structures as required by 40 C.F.R. § 112.7(a)(3) and (h); and failing to perform tank integrity testing appropriate to the type of tanks in use at the facility as required by 40 C.F.R. § 112.8(c)(6).

#### **V. ADMINISTRATIVE PENALTY**

41. In consideration of the penalty factors of CWA Sections 309(g) and 311(b)(8), 33 U.S.C. §§ 1319(g) and 1321(b)(8), including Respondent’s performance of the tasks set forth in Section VI of this CA/FO, Respondent shall pay to the United States a total civil administrative penalty in the amount of \$102,051 within thirty (30) calendar days of the Effective Date, as defined in Section XIII below, of this CA/FO.
42. Of the total amount, \$80,620 dollars shall represent payment for Respondent’s violations of Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and 1342, and \$21,431 dollars shall represent payment for Respondent’s violations of Section 311 of the CWA, 33 U.S.C. § 1321.



43. Respondent shall pay the amounts listed in Paragraph 42 as two separate payments, using any of the options listed below:

- a. Check Payment. Payment by a cashier's or certified check shall be made payable to "Treasurer, United States of America" and be mailed as follows:

- i. *If by regular U.S. Postal Service Mail:*

U.S. Environmental Protection Agency  
Fines and Penalties  
PO BOX 979077  
St. Louis, MO 63197-9000

- ii. *If by overnight mail:*

U.S. Environmental Protection Agency  
Government Lockbox 979077  
USEPA Fines and Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

- b. Automated Clearinghouse Payment: Payment by Automated Clearinghouse (ACH) via Vendor Express shall be made through the U.S. Treasury as follows:

U.S. Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking

- c. Fedwire: Payment by wire transfer to the EPA shall be made through the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
(Field Tag 4200 of the Fedwire message should read: D 68010727  
Environmental Protection Agency)

- d. Online Payment: This payment option can be accessed from the information below

Go to [www.pay.gov](http://www.pay.gov)  
Enter "SFO Form Number 1.1." in the search field



Open "EPA Miscellaneous Payments – Cincinnati Finance Center" form and complete required fields

Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at (513) 487-2091.

44. To ensure proper credit, Respondent shall include the following transmittal information with each penalty payment: (i) Respondent's name (as appears on the CA/FO), complete address, contact person, and phone number; (ii) the EPA contact person; and (iii) the reason for payment. In addition, for the payment relating to the violations of stormwater requirements at the Peninsula Facilities (\$80,620), Respondent shall include the docket number CWA-09-2018-0001. For the payment relating to violations of Section 311 of the CWA at the Aromas Facility (\$21,431), Respondent shall include the docket number OPA-09-2018-0001, and the notation: "Oil Spill Trust Fund."
45. Concurrent with payment, Respondent shall send a true and correct copy of each payment and accompanying transmittal information to the following addresses:

Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Tessa Berman  
Office of Regional Counsel (ORC-3)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

46. Respondent shall not, and shall not allow any other person to, deduct any penalties and interest paid under this CA/FO from federal, state, or local taxes.
47. Pursuant to CWA Sections 309(g)(9) and 311(b)(6)(H), 33 U.S.C. §§ 1319(g)(9) and 1321(b)(6)(H), if Respondent fails to pay the assessed penalty on time, the EPA may request the U.S. Department of Justice to bring a civil action to recover the overdue amount, plus interest at currently prevailing rates from the Effective Date of this CA/FO. In such an action, the validity, amount, or appropriateness of the assessed penalty shall not be subject to review. In addition to any assessed penalty and interest, Respondent shall pay attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty, which shall equal 20% of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter, for each quarter during which such failure to pay persists. The EPA may also take other debt collection actions as authorized by law, including, but not limited to, the Debt Collection Act, 33 U.S.C. § 3711, and 40 C.F.R. Part 13.

## VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

48. As part of the settlement of this administrative civil penalty action, Respondent shall perform an Environmental Restoration and Protection Supplemental Environmental Project (the SEP), as described in Paragraph 49 and Attachment A of this CA/FO. The EPA has taken Respondent's commitment to complete the following SEP into consideration in determining the assessed penalty amount.
49. By October 1, 2019, Respondent shall complete the following tasks, as described in further detail in Respondent's Proposal, entitled "Reclamation and Restoration of the Pajaro River Watershed and the Coyote Creek Watershed," which is included as Attachment A to this CA/FO and is hereby incorporated by reference:
- a. By October 1, 2019, Respondent shall remove 400 cubic yards of garbage or debris from specified areas within Coyote Creek, as described in Attachment A;
  - b. By October 1, 2019, Respondent shall remove 400 cubic yards of garbage or debris from specified areas within the Pajaro River, as described in Attachment A;
  - c. All garbage and debris thus removed shall be disposed of at an appropriate waste disposal facility, and shall be quantified prior to disposal.
50. Respondent is responsible for ensuring that the entity or entities performing any portion of the SEP comply with all applicable terms of this CA/FO.
51. In performing this SEP, Respondent shall spend a minimum of \$77,953.70 in costs for the tasks described in Paragraph 49 and Attachment A of this CA/FO.
52. By October 1, 2018, Respondent shall submit a SEP progress report detailing the progress Respondent has made toward SEP completion.
53. Within thirty (30) calendar days of completing the SEP tasks described in Paragraph 49 and Attachment A of this CA/FO, and incurring the SEP costs set forth in Paragraph 51, Respondent shall submit to EPA a SEP Completion Report that includes the following information:
- a. A detailed description of the work undertaken to complete the SEP, including photographic and/or video documentation of the removal of the 800 cubic yards of garbage in the specified locations pursuant to this SEP, and receipts from disposal facilities indicating the cubic yardage recovered from Coyote Creek and the Pajaro River;
  - b. A description of any problems encountered in completing the SEP and the solutions thereto;
  - c. An itemized list of all eligible SEP costs expended to implement the SEP, including supporting documentation verifying Respondent's expenditures for this project. This documentation shall include, but is not limited to proof of any

amount paid to a contractor to implement the project, and documentation of the cost of transport and delivery to an appropriate waste disposal facility;

- d. Certification by Respondent that the SEP has been fully implemented pursuant to the provisions of this CA/FO; and
  - e. A description of the specific environmental and/or public health benefits resulting from implementation of the SEP, including a quantification of pollutant reduction achieved as a result of the project.
54. Respondent agrees that failure to submit the progress report required by Paragraph 52 or the SEP Completion Report required by Paragraph 53 shall result in Respondent's liability for stipulated penalties pursuant to Paragraph 59.a of this CA/FO.
55. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:
- a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that the Respondent in good faith estimates that the cost to implement the SEP, exclusive of Respondent's internal labor costs, is \$77,953.70.
  - b. That, as of the date of executing this CA/FO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
  - c. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CA/FO;
  - d. That Respondent has not received and will not receive credit for the SEP in any other enforcement action;
  - e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
  - f. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;
  - g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 49 and Attachment A to this CA/FO; and
  - h. Respondent shall inquire of any contractor or entity employed to implement the SEP whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP. Respondent shall not use any contractor or entity that is party to such a transaction to implement the SEP.



56. The SEP shall be deemed to be "satisfactorily completed" when Respondent has completed the tasks described in Paragraph 49 and Attachment A of this CA/FO and the SEP Completion Report has been submitted to the EPA in accordance with Paragraph 53 of this CA/FO. The determination of whether Respondent has satisfactorily complied with the terms of this Consent Agreement is within the sole discretion of the Complainant, but will be made in good faith. The decision of the Complainant is not reviewable in any forum. EPA shall notify Respondent whether the SEP has been satisfactorily completed following submission of the SEP Completion Report, and Respondent shall have the SEP Cure Period of 60 days from the receipt of such notice (or such other time period as the Parties agree upon) to address any alleged deficiencies with respect to SEP implementation, as described in Paragraph 49 and Attachment A of this CA/FO, or with respect to the SEP Completion Report, as described in Paragraph 53. If Respondent does not address the alleged deficiencies within the SEP Cure Period, penalties shall accrue in accordance with Paragraph 59.b of this CA/FO.
57. Respondent shall maintain legible copies of all documentation relevant to the SEP or reports submitted to the EPA pursuant to this CA/FO and shall provide such documentation or reports to the EPA not more than seven (7) days after a request for such information.
58. Any public statement, oral or written, in print, film, or other media, made by Respondent or a representative of Respondent making reference to the SEP must include the following sentence: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Water Act."

## VII. STIPULATED PENALTIES

59. If Respondent violates any requirement of this CA/FO relating to the SEP, Respondent shall pay stipulated penalties to the United States as follows:
- a. For failure to provide a SEP progress report, as specified in Paragraph 52, or the SEP Completion Report, as specified in Paragraph 53, \$500 per day for the first to the fifteenth day of delay; \$1,000 per day for the sixteenth to the thirtieth day of delay, and \$3,000 per day for each day of delay thereafter.
  - b. If the SEP is not satisfactorily completed by October 31, 2019, or such later date as is mutually agreed to in writing among the Parties, Respondent shall pay a stipulated penalty of \$97,442.13, less any eligible SEP costs incurred that EPA determines were expended on the SEP in a manner consistent with this CA/FO and Attachment A. If Respondent does not address alleged deficiencies in SEP performance during the SEP Cure Period, as described in Paragraph 56, penalties under this paragraph shall accrue. The penalties under this paragraph for failure to accomplish satisfactory completion of the SEP may accrue regardless of whether Respondent has spent \$77,953.70 on the SEP. If EPA elects to seek a stipulated penalty under this Paragraph, the obligations of the Respondent to complete the SEP shall terminate upon payment of the stipulated penalty under this Paragraph.
  - c. If Respondent does not expend the entire amount specified in Paragraph 51, while



otherwise meeting the requirements of the SEP, then Respondent shall pay a stipulated penalty equal to the difference between the amount demonstrated expended as documented in the SEP Completion Report and the amount specified in Paragraph 51, plus an additional Stipulated Penalty of 10% of that difference.

60. Notwithstanding any other provision of this Section, the EPA may, in the unreviewable exercise of its discretion, waive stipulated penalties otherwise due under this CA/FO.
61. Respondent shall pay any stipulated penalties within thirty (30) calendar days of receiving the EPA's written demand for such penalties. All penalties shall begin to accrue on the first date of noncompliance, and shall continue to accrue through the date of completion. Respondent shall use one of the methods of payment specified in Paragraph 43, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.
62. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the requirements of this CA/FO.

#### **VIII. APPLICABILITY**

63. This CA/FO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, agents, employees, contractors, successors and assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondent's obligations under this CA/FO.

#### **IX. RESPONDENT'S ADMISSIONS AND WAIVERS**

64. In accordance with 40 C.F.R. § 22.18(b), for the purpose of this proceeding, Respondent:
- a. admits the jurisdictional allegations described in Sections II and III of the complaint;
  - b. neither admits nor denies specific factual allegations contained in Section IV of the complaint;
  - c. consents to all conditions specified in this CA/FO and to the assessment of the civil administrative penalty set forth in Section V above;
  - d. waives any right to contest the allegations set forth in this CA/FO; and
  - e. waives its right to appeal this proposed Final Order.

#### **X. RESERVATION OF RIGHTS**

65. In accordance with 40 C.F.R. § 22.18(c), full payment of the penalty set forth in this CA/FO only resolves Respondent's CWA civil penalty liabilities for the violations specifically alleged herein and does not in any case affect the right of the EPA to pursue appropriate injunctive or

other equitable relief or criminal sanctions for any violations of law.

66. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

#### **XI. ATTORNEY FEES AND COSTS**

67. Unless otherwise specified, each party shall bear its own attorney fees and costs.

#### **XII. NOTICES**

68. Respondent shall send all required submissions and any other written communications via email to each of the following individuals:

Greg Gholson  
Physical Scientist  
Enforcement Division  
U.S. Environmental Protection Agency, Region 9  
[Gholson.Greg@epa.gov](mailto:Gholson.Greg@epa.gov)

Connor Adams  
Life Scientist  
Enforcement Division  
U.S. Environmental Protection Agency, Region 9  
[Adams.Connor@epa.gov](mailto:Adams.Connor@epa.gov)

and

Tessa Berman  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 9  
[Berman.Tessa@epa.gov](mailto:Berman.Tessa@epa.gov)

69. Respondent's submissions must be signed and certified, using the language below, by a person described by 40 C.F.R. § 122.22(3)(b):

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

### **XIII. EFFECTIVE DATE AND TERMINATION**

70. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the Effective Date of this CA/FO is the date that the Final Order, having been signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. This CA/FO shall terminate when Respondent has complied with the requirements of this CA/FO in full.

### **XIV. PUBLIC NOTICE**

71. Pursuant to CWA Sections 309(g)(4) and 311(b)(6)(C), 33 U.S.C. §§ 1319(g)(4) and 1321(b)(6)(C), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent to this Consent Agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondent may withdraw from this Consent Agreement only upon receipt of written notice from the EPA that it no longer supports entry of this Consent Agreement.
72. Pursuant to CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), the EPA has consulted with the State of California regarding this penalty action.

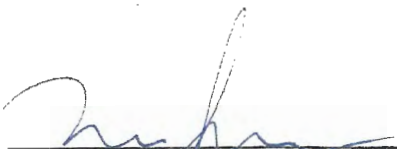
For Complainant the U.S. Environmental Protection Agency, Region 9

Kathleen H. Johnson  
Kathleen H. Johnson, Director  
Enforcement Division  
EPA Region 9

12-1-17  
Date



For Respondent Granite Rock Company.

  
\_\_\_\_\_  
Tom Squeri, President and CEO  
Granite Rock Company

11/17/2017  
\_\_\_\_\_  
Date

## ATTACHMENT A

### Reclamation and Restoration of the Pajaro River Watershed and the Coyote Creek Watershed

#### Summary:

Illegal dumping can be a significant source of pollution for riparian habitats located in urban areas. Items such as automobiles, refrigerators, computers, and waste of all shapes and sizes are commonly found in areas along riverbeds, specifically near urban areas and bridges. Garbage is also found near homeless encampments along rivers. The pollution to this natural habitat puts the health of local species at risk, including the steelhead trout, which is on the Federal Endangered Species List. Garbage can block river ways, isolating the trout on one side of the river or the other and preventing adults from getting to their spawning grounds or preventing young steelhead from making their way back to the ocean. Garbage can also pollute these water ways, putting healthy steelhead populations at risk of further decline.

Granite Rock Company ("Graniterock") will work with a contractor of its choosing to remove garbage and other debris from 22 miles of local waterways, thereby improving riparian habitat and reducing contamination that affects species such as steelhead trout. The project will consist of removing and properly disposing of 400 cubic yards of garbage and debris from Coyote Creek, and 400 cubic yards of garbage and debris from the Pajaro River by October 1, 2019. Specific locations that will be targeted for cleanup were identified through surveys completed in both watersheds to identify garbage "hot spots." These areas, identified in Figures 1 and 2, include common illegal dumping grounds such as homeless encampments, urban areas, and bridges, and other areas where high concentrations of garbage have come to be located.

This project aims to reduce contaminants affecting these two watersheds and to remove barriers to fish migration. The execution of this SEP will improve riparian habitat conditions, thereby improving the health of the local steelhead population and other species.

#### SEP Guidelines:

This proposal meets all of the characteristics of SEPs:

- *A SEP must improve, protect, or reduce risks to public health or the environment, although in some cases a SEP may, as a secondary matter, also provide the violator with certain benefits.*

This SEP will improve the environment by removing large amounts of garbage from the Coyote Creek and Pajaro River Watersheds, which will in turn improve the habitat for the federally endangered steelhead trout, and other species.

- *A SEP must be in settlement of an enforced action.*

This SEP is proposed in connection with an enforcement action by the US EPA.

- *A SEP is not otherwise legally required to perform.*

Graniterock is not otherwise legally required to perform this action.

This proposal also meets all the guidelines that a SEP must meet:

- *All projects must have sufficient nexus, a relationship between the violation and the proposed project.*

The enforcement action alleges violations of Sections 301(a), 402, and 311(j) of the Clean Water Act, 33 U.S.C. §§ 1311(a), 1342, and 1321(j). This SEP would directly benefit waterways impacted or potentially impacted by the alleged violations, by removing 800 cubic yards of garbage and debris from the watersheds.

- *The SEP may not be inconsistent with any provision of the underlying statutes that are the basis of the enforcement action and must advance at least one of the objectives of the environmental statutes that are the basis of the enforcement action.*

The objective of the Clean Water Act is to improve the overall environmental quality of our waterways by reducing discharges or the threat of discharges of contaminants into those waterways. This SEP is not inconsistent with the Clean Water Act and will directly improve water quality by removing sources of pollution from the waterways.

- *A SEP may not be an agreement to spend a certain amount on a project that will be defined later. Type and scope of the project must be clearly defined for a case team to establish nexus.*

This SEP is clearly defined in type and scope and is related to the underlying violations. Graniterock will remain ultimately responsible for ensuring successful completion of the work described herein.

#### **Qualifying categories of Acceptable SEPs**

Of the seven qualifying categories of acceptable SEPs, this SEP would qualify as an Environmental Restoration and Protection Project.

*Environmental Restoration and Protection: a project which enhances the condition of the ecosystem or immediate geographic area adversely affected by the violation.*

This project will directly improve the ecosystems affected by the alleged violations, by removing trash, which can be a significant source of contaminants. A float survey was performed in both watersheds in order to identify contamination hotspots. The survey identified items such as cars, motor oil, and furniture in the waterways, which will be targeted for removal through this project.

These pollution sources adversely affect the watershed as a whole, and negatively impact steelhead populations in particular. Steelhead trout are native to central, coastal California's 1,300 square mile Pajaro River Watershed, but there has been a massive decline in their numbers due to various anthropogenic activities, such as waste dumping by industrial companies and unregulated fishing. This project is designed to restore local steelhead habitat and improve water quality by removing trash and other sources of pollutants from the Pajaro River and Coyote Creek ecosystems.

### **Goals and Success Criteria for SEP**

The goal of the SEP is to remove 400 cubic yards of garbage along a 7 mile stretch on the Pajaro River (identified in Figure 1), and 400 cubic yards of garbage along a 15 mile stretch on Coyote Creek (identified in Figure 2). The areas to be addressed, the expected cubic yardages of waste, and specific garbage pickup locations have been predetermined based on the initial assessment of these watersheds. The SEP will be considered successful if Graniterock removes a total of 800 cubic yards of garbage from the areas identified within these two watersheds.

The project will prioritize the removal of all types of garbage and refuse from the river banks. Subject to obtaining access and any required approvals, Graniterock and its contractor will work to remove larger items from the river bed, such as abandoned cars and boats. These larger items may be complicated to remove due to concerns about stream bank integrity and property access. Where land access and stream bank integrity allow, the SEP will prioritize removing these larger items from the rivers.

#### *Coyote Creek*

Based on the assessment mentioned above, Graniterock plans to remove 400 cubic yards of garbage along a 15 mile stretch on Coyote Creek. Garbage will be removed from the following specific locations along the creek: The stretch of Coyote Creek from Anderson Reservoir to Hellyer Park in Santa Clara County, specifically near Hellyer Park.

This portion of the project will target items such as discarded household waste and abandoned homeless encampments. Graniterock and its contractor have identified several areas where major homeless encampments have left waste, as well as areas with significant tire dumping, which will be prioritized in completing this portion of the project.

#### *Pajaro River*

Based on the assessment mentioned above, Graniterock plans to remove 400 cubic yards of garbage along a 7 mile stretch on the Pajaro River. Garbage will be removed from the following specific locations along the river: The area between Murphy's Crossing and the Highway 1 bridge in Watsonville, California.

Initial surveys identified one location where hazardous waste (used diesel engine oil) was illegally dumped along the river. Graniterock maintains the licensing to properly transport and



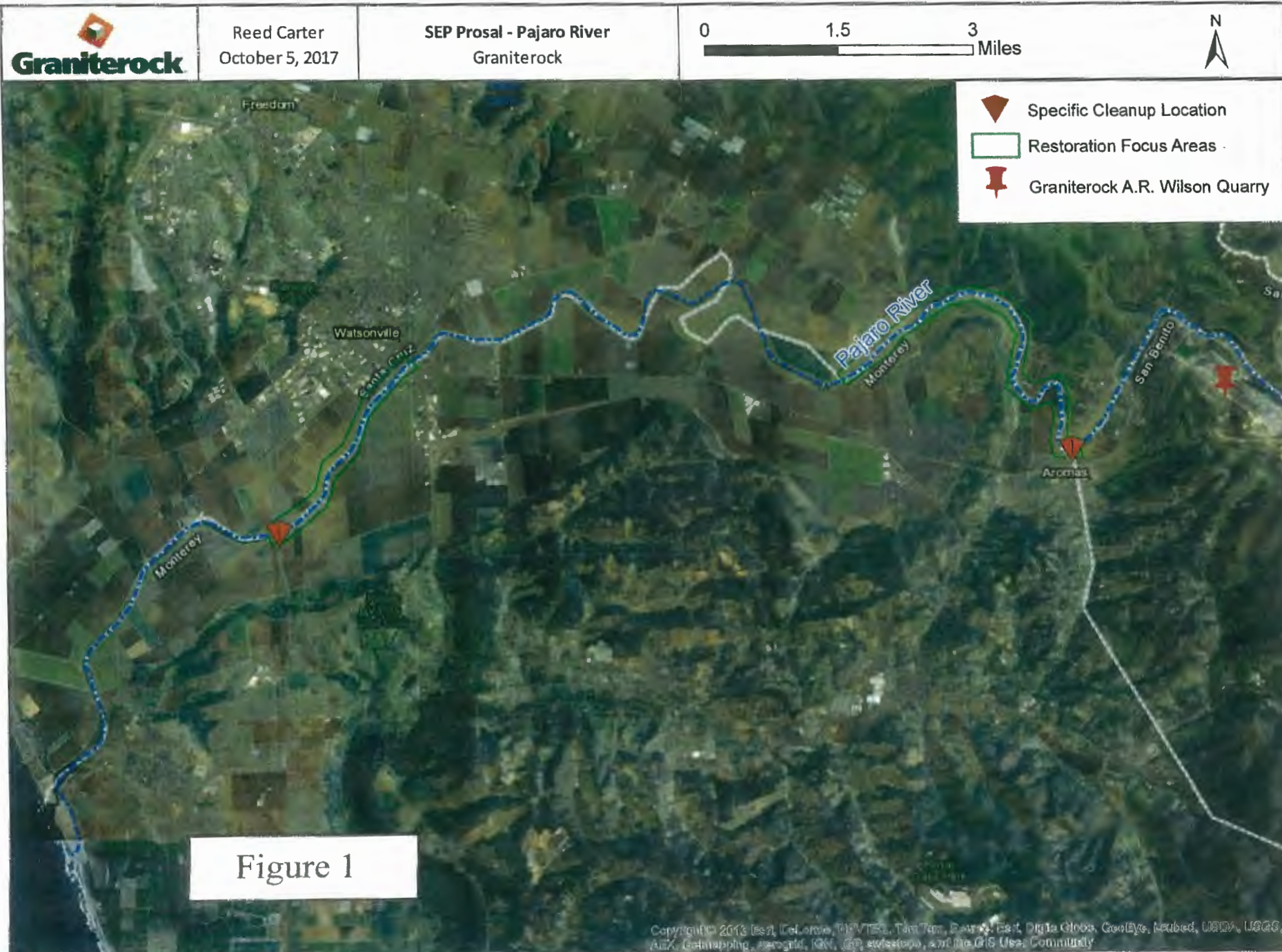
dispose of this material, and will ensure that the used diesel engine oil is safely removed and properly disposed. In addition, initial surveys identified at least two abandoned vehicles and one hot water heater, which will be priority items for removal.

### **Budget**

ITEMS	AMOUNT	COST
Garbage Bags, 39 gallon pro strengths	75 boxes. \$14.95 + tax/box	\$1,220.70
Work Gloves	100 pairs. \$5/pair	\$500
Garbage Gripper Wands	50 wands. \$20/wand	\$1,000
Cargo Bags (open top - close bottom)	25 bags. \$16/bag	\$400
Drinking Water	250 cases. \$4.50/case	\$1,125
Miscellaneous supplies	Rakes, pick axes, shovels, safety vests, heavy rope, antibiotic ointment, etc.	\$1,848
Gasoline	\$0.55/mile	\$5,000
Contracted Heavy Equipment		\$2,500
Contracted personnel (Coyote Creek Watershed)	1 staff supervisor, 1 clean-up coordinator	\$34,600
Contracted personnel (Pajaro River)	1 staff supervisor	\$29,760
	<b>TOTAL AMOUNT</b>	<b>\$77,953.70</b>

### **Reports and Deliverables**

All work described in the Consent Agreement and Final Order and in this attachment shall be completed by October 1, 2019. In accordance with the Consent Agreement and Final Order, Graniterock shall submit a SEP progress report by October 1, 2018, detailing the progress that has been made toward SEP completion. Graniterock shall submit a SEP Completion Report containing the information specified in the Consent Agreement and Final Order, to the EPA within 30 days of completing the work described in the Consent Agreement and Final Order and in this attachment, or by October 31, 2019.





SEP Prosal - Coyote Creek  
Graniterock

0                      6.5                      13                      Miles

